UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALSTATE MAINTENANCE, LLC
Employer

and Case 29-RC-159794

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ
Petitioner

and

LOCAL 660, UNITED WORKERS OF AMERICA
Intervenor

ORDER

The Intervenor's Request for Review of the Regional Director's Decision and Certification of Representative is denied, as it raises no substantial issues warranting review.[1]

[1] The Intervenor seeks review of the Regional Director's denial of its request for a hearing concerning the Board's jurisdiction over the Employer. The Employer and the Petitioner stipulated in the election agreement that the Board had jurisdiction over the Employer, and the Regional Director honored the stipulation. Because the Intervenor's showing of interest consisted of only one employee's designation, out of a unit of approximately 283 employees, it lacked status to object to the stipulation. See NLRB Casehandling Manual, Part Two, Representation Proceedings, §§ 11023.4, 11088 (a union with a showing of interest of less than 10 percent may not object to an election agreement for any reason). Limiting the ability of unions with minimal employee support to insist on a hearing, notwithstanding the agreement of all parties with a substantial interest in the proceeding as to all of the issues, is a longstanding Board practice that serves the same salutary purpose as the requirement of a showing of interest: "avoid[ing] needless dissipation of the Government's time, effort, and funds." *O.D. Jennings & Co.*, 68 NLRB 516, 518 (1946); see *San Francisco Culinary Workers Joint Board v. NLRB*, 501 F.2d 794, 798 (D.C. Cir. 1974) (describing the Board's 10 percent showing of interest requirement for an intervenor to, *inter alia*, block an election agreement as a "reasonable and established Board practice"). The authority cited in the dissent is inapposite: it addresses *when* the issue of Board jurisdiction may be raised, not *who* may

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., March 24, 2016

Member Miscimarra, dissenting in part:

Contrary to my colleagues, I would grant the Intervenor's Request for Review of the Regional Director's resolution of Intervenor's Objection 2 – which argues the Board lacks jurisdiction over the Employer – because I believe this raises a substantial issue warranting review. See, e.g., *Pollack Electric Co.,* 214 NLRB 970, 970 fn. 4 (1974) (a party may raise a question concerning the Board's statutory jurisdiction "at any time"); Section 102.65(b) of the Board's Rules and Regulations (an intervenor is "a party to the proceeding"); Board's Rules Section 102.66(d) ("[N]o party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition.").[2] On the question of jurisdiction, as my colleagues indicate, a pending

---

raise it. The Employer has not sought to contest jurisdiction in this proceeding; nor, under the circumstances, is it appropriate to permit the Intervenor to do so now. We note that the issue of Board jurisdiction is being litigated in a consolidated unfair labor practice case involving the same parties. Contrary to the dissent, there is no risk of inconsistent decisions inasmuch as we are not deciding the issue here.

[2] Relying on provisions in the Board's Casehandling Manual stating that a "participating" intervenor—that is, an intervenor with a less-than-10-percent showing of interest—may not "block" an election agreement, my colleagues say that the Intervenor (which is undisputedly a "participating" intervenor) may not raise the issue of the Board's jurisdiction. See NLRB Casehandling Manual, Part Two, Representation Proceedings, §§ 11023.4, 11088. I find their position unpersuasive for two reasons. First, to the extent these sections in the Casehandling Manual conflict with *Pollack Electric* and Secs. 102.65(b) and 102.66(d) of the Board's Rules, cited above, the Board's precedent and Rules take precedence over the Casehandling Manual's nonbinding guidelines. See, e.g., *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn. 4 (2007) ("The Casehandling Manual is issued by the General Counsel, not the Board, and we have repeatedly stated, with court approval, that it is not binding authority on the Board."). Second, the cited provisions of the Casehandling Manual provide that a participating intervenor may not "block" an election agreement. They do not define what the term *block* encompasses, nor do they specify that raising a question concerning the Board's statutory jurisdiction over a party to a representation proceeding constitutes "blocking" an election agreement. In light of *Pollack Electric* and the Board Rules cited above, I believe the Casehandling Manual provisions cited by my colleagues are best construed as excluding jurisdictional challenges from the scope of that term.

unfair labor practice case involving the same parties presents this same question, and the Employer argues there that it is subject to the Railway Labor Act (RLA) and *not* the National Labor Relations Act (NLRA). Although the Employer and Petitioner stipulated in this case that the NLRB has jurisdiction, I believe the stipulation is not necessarily controlling in the circumstances presented here, given that the same Employer has asserted a contrary position in the other pending Board proceeding, creating the risk of inconsistent results.[3]

PHILIP A. MISCIMARRA, MEMBER

[3] In light of the posture of this case, I express no opinion on the merits of the jurisdictional issue. But I respectfully disagree with my colleagues insofar as they assert that there is no risk of inconsistent decisions here. As a result of their decision, the Board is upholding the Certification of Representative issued by the Regional Director, an act the Board has no authority to perform unless it has jurisdiction. Moreover, they presumably intend that the Employer recognize and bargain with the Petitioner on the basis of the certification. I believe that any such bargaining would be inconsistent with a subsequent finding in the unfair labor practice case that, as the Employer there urges, the Board lacks jurisdiction.

I join my colleagues in denying review of the Regional Director's overruling of Intervenor's Objection 1. The Regional Director determined that the Intervenor was not entitled to full intervenor status in this case on the basis of its prior collective-bargaining agreement with the Employer where, pursuant to a settlement agreement, the Employer has ceased giving effect to that agreement and withdrawn recognition from the Intervenor. In denying review on Objection 1, I do not rely on the fact that the prior agreement was found unlawful by the Regional Director. The lawfulness of that agreement is at issue in a pending unfair labor practice case.